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From: Chuck Gengler
To: Mike Powell, Kathleen Abernathy, Michael Copps, KM KJMWEB, Commissioner
 Adelstein, jgoldstei@fcc.gov

Date: 3/19/03 4:17 PM
Subject: FYI: Another interesting article today

Press Release Source: The Phoenix Center
http://biz.yahoo.com/prnews/030319/dcw045_1.html

Bell Company 'Broadband' Deregulation Creates 'Massive Loophole' for
 Future Monopoly
 Wednesday March 19, 3:48 pm ET

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WASHINGTON, March 19/PRNewswire/ -- Legislative and regulatory initiatives to remove "new" Bell Operating Company fiber and "hybrid-fiber" facilities from the unbundling requirements of the 1996 Telecommunications Act will not lead to more broadband deployment, but will instead provide a massive "loophole" for the Bells to exploit their market power and retain their monopoly over the "last mile."

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That is the conclusion of POLICY BULLETIN NO. 3: The Broadband Loophole: Is Symmetrical Regulation in the Face of Asymmetrical Market Power Good Public Policy? issued today by the Phoenix Center for Advanced Legal and Economic Public Policy Studies (www.phoenix-center.org).

The BULLETIN notes that speculation that the RBOCs will begin rolling out fiber optic lines to the homes is "an economic non-starter." According to Lawrence J. Spiwak, president of the Phoenix Center, "Absent competitive pressures, the Bell company monopolies--by definition--will never innovate, cut costs or particularly seek to become efficient, and to expect otherwise is utter folly."

The BULLETIN also analyzes the implication of a significant victory for the RBOCs contained in the FCC's Triennial Review decision in February: the de-regulation of "hybrid loops, which the FCC describes as "the packet-switching features, functions, and capabilities of incumbent LEC loops."

This decision, the paper predicts, allows the RBOCs to use their market power to foreclose competitors in violation of the letter and spirit of the 1996 Telecommunications Act. So much so that, according to Spiwak, "the FCC's decision creates a loophole in the 1996 Act that you can drive ten Mack trucks through."

Accordingly, the paper questions why policymakers are choosing to provide incumbent monopolists with sector-specific relief, instead of focusing on the overall state of competition in an interlocked telecommunications marketplace and doing something to promote--rather than deter--new non-RBOC competitive entry.

"If we are ever to move from 'one' to 'many' local access networks,"

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concludes Spiwak, "then policymakers must approach the complex economics of the 'last mile' with analytical rigor. **We** cannot ignore the laws of economics just as we cannot ignore the laws of gravity."

The Phoenix Center is an international, non-profit 501(c)(3) organization that studies broad public-policy issues related to governance, social and economic conditions, with a particular emphasis on the law and economics of regulated industries.